

1 First, Mr. Rivera pled guilty, pursuant to a written plea agreement, to three counts of illegal
 2 entry by an alien, in violation of 8 U.S.C. § 1325. In the written plea agreement, Mr. Rivera
 3 explicitly waived his right to appeal and/or collaterally attack his conviction or sentence. The
 4 Ninth Circuit has long acknowledged that the terms of a plea agreement are enforceable. *See,*
 5 United States v. Baramdyka, 95 F.3d 840, 843 (9th Cir. 1996), *cert. denied*, 117 S.Ct. 1282 (1997).
 6 Since Mr. Rivera expressly waived his statutory right to appeal or collaterally attack his sentence
 7 in his plea agreement, Mr. Rivera is now precluded from challenging that sentence pursuant to 28
 8 U.S.C. § 2255. *See, United States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir. 1993) (holding that
 9 a knowing and voluntary waiver of a statutory right is enforceable).

10 Moreover, even if Mr. Rivera had not expressly waived his right to appeal or collaterally
 11 attack his sentence, his petition would still fail. Essentially, Mr. Rivera argues that since he did
 12 not agree to a 54 month sentence, the Court was precluded from sentencing him to the 54
 13 months that he received. However, the written plea agreement specifically states that “the
 14 sentence is within the sole discretion of the sentencing judge.” (Plea agreement, para. 10).
 15 Hence, the imposition of a 54 month sentence did not violate Mr. Rivera’s plea agreement.
 16 Accordingly,

17 **IT IS ORDERED** that Petitioner’s Motion to Vacate, Set Aside or Correct Sentence is
 18 **DENIED.**

19
 20 Bec 16, 2009
 21 date

22 Gordon Thompson, Jr.
 23 GORDON THOMPSON, JR.
 24 United States District Judge

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 28 cc: AUSA Bruce Castetter